CHARITIES AND TRUSTS FOR CHARITABLE USES — WHAT CONSTITUTE CHARITIES — HOSPITAL FOR EMPLOYEES MAINTAINED BY RAILROAD. — A monthly fee was deducted by the defendant company from the wages of its employees for the purpose of maintaining a hospital and providing medical services for sick and injured employees. The company derived no profit from this. An injured employee was treated by the company's surgeon and died because of the surgeon's negligence. *Held*, that the company is not liable, provided it used reasonable care in the selection of surgeons. *Arkansas Midland R. Co.* v. *Pearson*, 135 S. W. 917 (Ark.).

A charitable hospital is not liable for the negligent acts of its physicians and surgeons unless it has been guilty of negligence in selecting them. *McDonald* v. *Massachusetts General Hospital*, 120 Mass. 432. *Contra*, *Glavin* v. *Rhode Island Hospital*, 12 R. I. 411. This principle has been extended to hospitals run by railroads for the treatment of their sick and injured employees. *Eighmy* v. *Union Pacific Ry. Co.*, 93 Ia. 538. It has been held further, in accord with the principal case, that such a hospital run from funds deducted from the wages of employees, but without direct profit to the company, is, from the standpoint of the employees, a charity. *Texas Central R. Co.* v. *Zumwalt*, 132 S. W. 113 (Tex.); *Wells* v. *Ferry-Baker Lumber Co.*, 57 Wash. 658. If profit is derived from such a hospital, it is no charity, and the company is liable for the negligence of its physicians and surgeons. *Texas & Pacific Coal Co.* v. *Connaughten*, 20 Tex. Civ. App. 642; *Sawdey* v. *Spokane Falls & Northern Ry. Co.*, 30 Wash. 349. But, it is submitted, the mere lack of intention to make direct profit should not be the sole determining feature of a charity. *Donnelly* v. *Boston Catholic Cemetery Association*, 146 Mass. 163; *Newcomb* v. *Boston Protective Department*, 151 Mass. 215. And as in the principal case there seem to be great indirect benefit to the company and a business contractual duty to provide medical attention for good consideration, the company shou'd be held liable. *Phillips* v. *St. Louis & San Francisco R. Co.*, 211 Mo. 419; *Texas & Pacific Coal Co.* v. *McWain*, 124 S. W. 202 (Tex.).

CHATTEL MORTGAGES — RECORDING AND REGISTRY — REMOVAL TO ANOTHER STATE. — A trust deed conveying two mules as security for a debt and providing that the mortgagor should retain possession until default, was executed and recorded in Mississippi, where the property then was, according to the laws of that state. After default in payment, the mortgagor, without the knowledge or consent of the mortgagee, removed the property to Tennessee and sold it to the defendants, *bonâ fide* purchasers without notice. *Held*, that the mortgagee has a superior title. *Newsum* v. *Hoffman*, 137 S. W. 490 (Tenn.).

The overwhelming weight of authority supports the rule that the interest of a mortgagee, once vested by the recording acts of one state, will be respected wherever the property goes. *Langworthy* v. *Little*, 12 Cush. (Mass.) 109; *Greenville Nat. Bank* v. *Evans-Snyder-Buel Co.*, 9 Okl. 353. As in other cases, where such recording fails as a real protection to purchasers, the rule is *caveat emptor*. *Handley* v. *Harris*, 48 Kan. 606. See 19 HARV. L. REV. 568. The question usually resolves into one of policy. Some courts have held that, as part of a general policy against transfers without change of possession, the rights of *bonâ fide* purchasers as against such foreign mortgages, being unprotected by their own recording system, cannot be affected by records existing in another state. This seems to be law in only three jurisdictions at most. *Corbett* v. *Littlefield*, 84 Mich. 30; *Miles* v. *Oden*, 8 Mart. N. S. (La.) 214; *Bank* v. *Carr*, 15 Pa. Super. Ct. 346. On the other hand, the general prevalence of recording acts justifies the policy, commonly styled comity, of recognizing and preferring the interest acquired under such a statute in another state. *Parr* v. *Brady*, 37 N. J. L. 201. Some authority supports the principal case in the

qualification that the removal must be without the mortgagee's consent. *Jones* v. *North Pacific Fish & Oil Co.*, 42 Wash. 332; *Blythe* v. *Crump*, 28 Tex. Civ. App. 327. But the weight of authority holds consent to be immaterial. *Shapard* v. *Hynes*, 104 Fed. 449; *Cobb* v. *Buswell*, 37 Vt. 337.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — COMPELLING RAILROAD TO PAY FOR SIDE TRACKS. — A state railroad commission directed the defendant to construct a side track from its main line, across a public highway, to an adjoining stone quarry, on condition that the owner of the latter should do all the necessary grading on his land. *Held*, that the order of the commission should be affirmed. *State* v. *Chicago, M. & St. P. Ry. Co.*, 131 N. W. 859 (Minn.).

The common law recognizes that adequate shipping facilities in exceptional industries requiring bulk shipments necessitate private switches. *Olanta Coal Mining Co.* v. *Beech Creek R. Co.*, 144 Fed. 150. Statutes perhaps require railroads to permit connection to be made with other adjacent factories. WIS. STATS., 1898, § 1802. But statutes placing the entire cost of the siding on the railroad are unconstitutional, as taking private property without due process of law and without compensation. *Mays* v. *Seaboard Air Line Ry.*, 75 S. C. 455. See 20 HARV. L. REV. 494. If the entire expense cannot be placed on the railroad it would seem that to apportion the cost would be equally objectionable. *Northern Pacific Ry. Co.* v. *Railroad Commission*, 57 Wash. 134. In the principal case, the court argues that freight receipts will give sufficient compensation. But this overlooks the fact that charges are remuneration for carrying freight, and that shippers without private sidings would have to pay the same rates. *Cf. Chesapeake & Ohio Ry. Co.* v. *Standard Lumber Co.*, 174 Fed. 107, 112. The court justifies its decision also by the police power. Undoubtedly, by the exercise of the police power, a commission may require a railroad to provide adequate facilities. But the decision seems to go beyond such regulation in requiring the railroad to assume an obligation to receive goods beyond its established route.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — POWER TO FORBID WASTE OF UNDERGROUND WATER. — A state statute forbade landowners from drawing from artesian wells on their property unreasonable quantities of carbonated water, and from wasting the water as a means of collecting the gas contained therein for the purpose of vending it as a separate commodity. *Held*, that the statute does not constitute a deprivation of property without due process of law. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61. See NOTES, p. 76.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — WORKMEN'S COMPENSATION ACTS. — A Washington statute provided that workmen injured in certain "extra hazardous" employments while in the course of employment, the injury not being wilful on the part of the employee, should recover a fixed compensation from an industrial insurance fund; this fund to be established by graded, yearly contributions from employees in the industries enumerated as "extra hazardous." *Held*, that the statute is constitutional and does not violate the "due process of law" clause in the constitution. *State ex rel. Davis-Smith Co.* v. *Clausen*, Wash., Sup. Ct., Sept. 27, 1911.

For a discussion of a New York case involving similar principles, see 24 HARV. L. REV. 647. It will be noticed that the Washington act goes beyond the New York act by creating an annual indemnity fund to which employers are compelled to contribute irrespective of the fact that there may be no injuries among the workmen of a particular contributor during the period over which any contribution extends.